

Article - Tax - General

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§10–804.1.

(a) In this section:

(1) “corporate group” means:

(i) an affiliated group or controlled group under § 1504 or § 1563 of the Internal Revenue Code; or

(ii) an affiliated group of corporations:

1. that is engaged in a unitary business; and

2. more than 50% of the voting stock of each member of which is directly or indirectly owned by a common owner or common owners, either corporate or noncorporate, or by one or more members of the group; and

(2) “corporate group” does not include:

(i) any corporation that, for any reason, is not subject to United States federal income tax;

(ii) an insurer as defined in § 1–101 of the Insurance Article;
or

(iii) a regulated investment company, as defined in § 851(a) of the Internal Revenue Code.

(b) Each corporation that is required to file an income tax return under this title and is a member of a corporate group shall file with the Comptroller:

(1) a pro forma “water’s edge” combined corporate income tax return filed in accordance with regulations adopted by the Comptroller; and

(2) in a format specified by the Comptroller:

(i) the sales factor that would be calculated for this State and the difference in Maryland income tax that would be owed if the corporation were required to include in the numerator of the sales factor for purposes of apportioning

income to the State all sales of property shipped from an office, store, warehouse, factory, or other place of storage in this State where:

1. the purchaser is the federal government; or
2. the property is shipped or delivered to a customer in a state in which the selling corporation is not subject to a state corporate income tax or state franchise tax measured by net income and could not be subjected to such a tax if the state were to impose it; and

(ii) for any income that the taxpayer has identified, on the income tax return filed under this title or on an income tax return filed in any state, as income that is nonoperational and therefore not apportionable:

1. the amount and source of that nonoperational income; and
2. if the commercial domicile of the corporation is in this State, the difference in tax that would be owed if the corporation were required to allocate 100% of the nonoperational income to Maryland to the fullest extent allowed under the United States Constitution.

(c) (1) The statements required under subsection (b) of this section:

(i) shall be filed annually, for all taxable years beginning after December 31, 2005, but before January 1, 2011, on or before dates specified by the Comptroller in an electronic format as specified by the Comptroller;

(ii) shall be:

1. made under oath and signed in the same manner as required for income tax returns under § 10–804 of this subtitle; and

2. subject to audit by the Comptroller in the course of and under the normal procedures applicable to corporate income tax return audits; and

(iii) notwithstanding any other provision of law, shall be treated as confidential taxpayer information subject to Title 13, Subtitle 2 of this article.

(2) The Comptroller shall develop and implement an oversight and penalty system to ensure that corporations provide the required disclosure statements in a timely and accurate manner.

(3) The Comptroller shall publish the name of, and penalty imposed on, any corporation failing to file a statement required under this section or filing an inaccurate statement.

(d) (1) A corporation submitting a statement required under this section may submit supplemental information that, in its sole judgment and discretion, could facilitate proper interpretation of the information included in the statement.

(2) A corporation shall file a supplemental statement under this section within 60 days after:

(i) the corporation files an amended tax return under this title; or

(ii) the corporation's tax liability for a tax year is changed as the result of an audit adjustment or final determination of liability by the Comptroller or by a court of law.

(e) (1) The Comptroller shall:

(i) collect, compile, and analyze the information submitted under this section;

(ii) use the information submitted under this section to provide analyses as requested by the Governor or the General Assembly relating to the corporate income tax or proposals for changes to the corporate income tax; and

(iii) on or before March 1 of each year, based on information provided in income tax returns and the data submitted under this subsection, submit a report to the Governor and, subject to § 2-1257 of the State Government Article, to the General Assembly, concerning the corporate income tax.

(2) The report required under this subsection shall:

(i) summarize the information submitted under this section; and

(ii) provide detailed analyses of the characteristics of corporate taxpayers, including:

1. historical series of data and detailed reports for the reported year; and

2. the distribution of Maryland taxable income, income tax liability, and other elements of the corporate income tax such as tax credits, modifications to income, and net operating loss carryovers.

(3) The information provided in the report shall be provided by various categories, including:

(i) business category; and

(ii) various measures of size, such as taxable income, in-State and worldwide payroll, and in-State and worldwide gross receipts.

(f) The Comptroller shall adopt appropriate regulations to implement the provisions of this section.

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